

**LABOR
COMMISSION
STATE OF UTAH**



**QUARTERLY
NEWSLETTER
3rd Quarter 2003**

ON - THE - JOB

R. LEE ELLERTSON, Editor-in-Chief

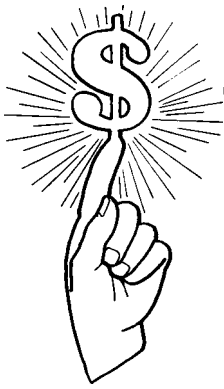
ROBYN B. BARKDULL, Editor

COMMISSIONER'S CORNER

**By R. Lee Ellertson, Commissioner
(See page one)**

Inside

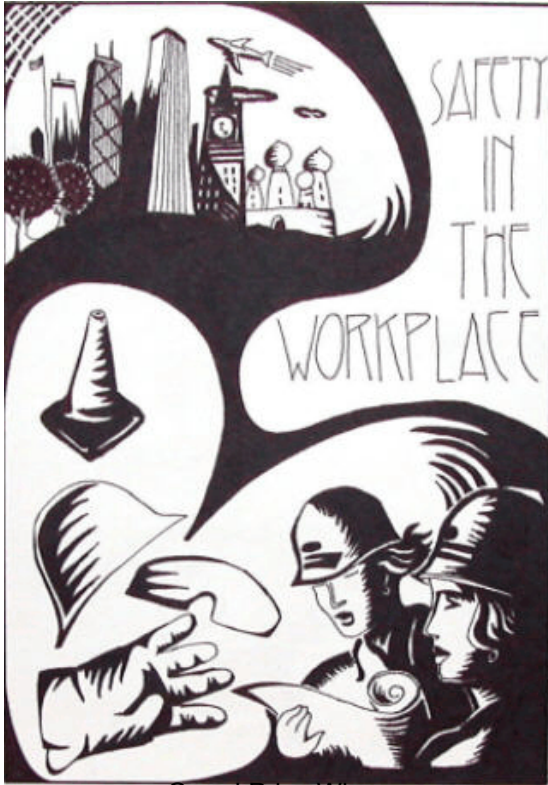
The "Rules" Corner	⇒	3
Compromise/Settlement	⇒	4
Partners in Safety/Health	⇒	5
Workers' Comp. Review	⇒	6
New Director Appointed	⇒	7
Required Posters	⇒	8



fety Pays.....

Ask Contest Winners!

When Taylor Martindale of Millcreek Junior High School in



Grand Prize Winner
2003 Take Safety Seriously Poster Contest

Labor Commission's Workplace Safety Poster Contest, she had no idea how much safety really pays! Taylor was selected as the Grand Prize Winner in the statewide contest and took home a check for \$500 for her winning entry. She was chosen from 560 entries submitted by 21 different middle and junior high schools.

The poster contest, in its sixth year, is part of the Labor Commission's ongoing media campaign to "Take Safety Seriously". It is open to all middle and junior high schools across Utah.

Because the workplace impacts all people and families in Utah, the Utah State Legislature appropriated funds generated from a percentage of the workers' compensation premium to the Labor Commission to be used in informing citizens of the need for workplace safety. As students in the junior high and middle schools participate in the technology/
continued on page 2.....

Bountiful, Utah, accepted the challenge from John Brewer, her art teacher, to submit an entry for the

life/careers “TLC” project and are the workers of the future, we believe it is important to begin the prevention process early by stressing safety. This contest has generated great interest in workplace safety and those schools who have participated in the past have found it both rewarding and educational. The workplace safety posters could be done through the art department or integrated into the TLC curriculum and serve as a motivational learning tool.

Millcreek Junior High School not only boasted the winning entry, but was a big money winner itself. The Labor Commission matches any money won by students in an award to the school as well. In addition to Taylor’s winnings, Stephanie Williams tied for the 3rd Runner-up which paid \$300 and Sara Squire took Honorable Mention for \$100 to make Millcreek the winner of \$900 for their art department.

Mountain Ridge Jr. High School in Highland also tied for a \$900 prize. Ashley White was the 2nd

and Alex Kearle all earned Honorable Mention for \$100 each.

Holli Hobbs of South Cache Freshman Center claimed the 1st Runner-up prize of \$300 and Austin McDonagh took Honorable Mention for \$100 and a total of \$400 for their school.

The final two winners came from Morgan Middle School where Kristen Broadhead and Hailey Haslam both took Honorable Mention for \$100 apiece and a \$200 check for their school.

These top twelve winners of the contest will each have their entry featured in the Labor Commission’s Workplace Safety calendar for 2004. The Commission distributes more than

30,000 of the safety calendars throughout the year and we consider it a very effective tool in generating awareness to the public of need for safety in the workplace.

Anyone interested in details of the contest for next year should contact Robyn Barkdull at the Labor Commission at (801) 530-6815 or by email at rbarkdull@utah.gov.



Taylor Martindale - Millcreek Jr. High School
Winner of \$500 grand prize in 2003 Poster Contest



1st Runner-Up - 2003 Poster Contest
Holli Hobbs - So. Cache Freshman Center

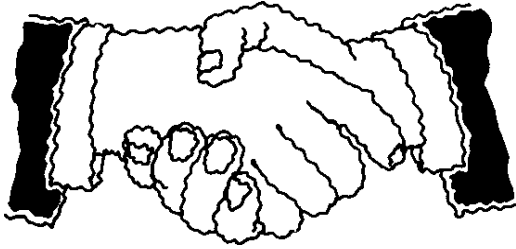


2nd Runner-Up - 2003 Poster Contest
Ashley White - Mountain Ridge Jr. High School

Runner-up and Michelle Fitzgerald tied for 3rd Runner-up for \$300 each and Aleisha Koenig, Sara Seamons,

Compromise and Settlement - A Golden Rule Concept

By: Hap Stephens and Bel Randall, UALD



The Utah Antidiscrimination and Labor Division (UALD) has processed more than 1,800 wage claims, more than 900 charges of employment discrimination and about 25 complaints of housing discrimination this last year. The statutes that govern these claims require an investigation to determine the validity of the claims. Fortunately, the laws also allow the division to attempt to resolve claims, charges and complaints filed through a settlement process. In that regard the division has, for the last eight years, maintained an active ADR (alternative dispute resolution) group. Without the ability to settle disputes, the division would suffer a backlog on the filed cases that would be years rather than months.

As an indication of the critical nature of the ADR function, the division over the last five months, has worked hard to complete its mission without a Coordinator or ADR staff. During that period, the division has asked the current investigative staff to commit itself to meeting our ADR needs. Fortunately, as a result of division policy and the commitment of the Utah Labor Commission to provide the best service possible to its customers, the entire investigative staff of the UALD had previously received mediation training. That training resulted in the ability of the division to maintain a reasonable rate of closure on the claims filed. During this last year more than half of all wage claims set for hearing and approximately 50% of all discrimination charges filed resulted in some settlement negotiated during our ADR process.

We find that individuals, with the assistance of a trained mediator, can often create solutions that were thought impossible at the time charges and complaints were filed. At times, something as simple as a heartfelt apology can resolve a charge of discrimination.

"We find that individuals, with the assistance of a trained mediator, can often create solutions that were thought impossible at the time charges and complaints were filed."

At other times, the reality of the basis for the charges filed can open a Respondent's eyes to the potential for significant damage, thus helping them move to a commitment which will satisfy potential damages at the earliest possible date. Damages can often reach tens of thousands of dollars and when settled through the mediation process may actually result in saving significant amounts of attorney's fees and other litigation related expenses. Conversely, a Claimant may realize that the business reasons propounded by a Respondent, adequately demonstrate that monies are not owed or actions taken were not discriminatory.

It is imperative that all parties agreeing to participate in a resolution conference understand the rules of the ADR process. First it should be known that the conference is voluntary. The ADR specialist is not

there to serve as an advocate but is to facilitate free and open discussion designed to lead to a resolution of the issues raised. The issues discussed are settlement matters and cannot be brought forward and made a part of the investigation or subsequent litigation. State law prohibits courts from considering information discussed in a settlement conference if those discussions are brought up during the course of a subsequent trial. The claimed facts of any case are not as important as a desire to work toward an acceptable resolution.

Compromise is sometimes a difficult concept for individuals who have been raised in an environment that teaches us that the winner takes all. However, we often remind people that there really are no winners at the end of an acrimonious investigation or litigation process. Bad feelings become more entrenched and results, after years of investigation and litigation, can be skewed by the passage of time. A willing participation in ADR and a concerted effort to work towards resolution is often the easiest demonstration of our intent to live by the golden rule. It is our opinion that we get back from others only what we are willing to give. Compromise can be a good thing.

Partners in Safety and Health:

UOSH - MANAGEMENT - LABOR

By Tori Burns, Compliance Manager, UOSH

The Utah Occupational Safety and Health Division (UOSH) of the Labor Commission awarded Merit recognition status through its Voluntary Protection Programs (VPP) to General Electric Medical Systems - Orthopedic Equipment Company (GEMS - OEC) at a recent ceremony held at their facility. The award was

“As in any partnership, there are three crucial elements: trust; cooperation; and commitment. Management shows their commitment to worker safety and health by inviting UOSH into their workplace. Employees cooperate with management to ensure a safe and healthy workplace. In return, UOSH removes the site from programmed inspection lists and does not issue citations for violations of standards which are promptly corrected “.

presented on behalf of the Labor Commission by Commissioner Lee Ellertson with GEMS-OEC's employees in attendance. Directly after the award was presented, employees raised a flag bearing the VPP logo and the words, “Partners in Safety and Health - UOSH - Management - Labor”. This effort was the result of many hours of hard work by dedicated GEMS - OEC and Labor Commission employees. GEMS - OEC is the second company to be recognized through the VPP process in Utah, with Western Zirconium achieving Star recognition nearly ten years prior.

For those of you who are not familiar with VPP, it was established by the Occupational Safety and Health Administration (OSHA) in 1982 in an effort to recognize and partner with work-sites that implement exemplary systems to manage worker safety and health. At these sites, management and labor voluntarily implement comprehensive safety and health programs which go beyond basic compliance with UOSH and OSHA standards. Approval into VPP is official recognition of the outstanding efforts of employers and employees who have achieved exemplary occupational safety and health.

As in any partnership, there are three crucial elements: trust; cooperation; and commitment. Management shows their commitment to worker safety and health by inviting UOSH into their workplace. Employees cooperate with management to ensure a safe and healthy workplace. In return, UOSH removes the site from programmed inspection lists and does not

issue citations for violations of standards which are promptly corrected.

There are established performance- based criteria for a managed safety and health system in VPP. The criteria include four basic elements: management, leadership, and employee involvement; work-site analysis; hazard prevention and control; and safety and health training. Employers at work-sites meeting the criteria are invited to submit an application for UOSH to evaluate. If accepted, UOSH will conduct an onsite review to verify that the safety and health management system meets VPP requirements. Qualified sites will be approved into one of three programs:

STAR - Sites which have implemented comprehensive, successful, safety and health management systems, and achieved injury/illness rates below their industry's national average.

MERIT - Sites with the potential and commitment to achieve Star quality within 3 years.

STAR DEMONSTRATION - Sites with Star quality safety and health protection that want to test alternatives to current Star eligibility and performance requirements.

Sites that qualify must submit annual self-evaluations and undergo periodic onsite reevaluations to remain in the programs. UOSH will continue to investigate workplace complaints, serious accidents and fatalities, or other significant events through enforcement procedures at a VPP work-site.

In addition to public recognition for an exemplary safety and health management system and removal of the work-site from UOSH's programmed inspection list, there are numerous other advantages to VPP. For example, statistics for VPP work-sites show that the average VPP work-site has a lost workday incidence rate 52% below the average for its industry. These sites typically do not start out with such low rates. Reductions in injuries and illnesses begin when the site commits to the VPP approach to safety and health management and the challenging VPP application process.

UOSH is committed to expanding this program! Our goals for the next year include the evaluation and approval of 3-4 new work-sites and to continue to foster our relationship with GEMS - OEC while they work toward Star recognition. Currently there are several

applications in process, including one work-site utilizing the Voluntary Protection Programs

Participant's Association (VPPPA) Mentoring program by receiving onsite mentoring from the GEMS - OEC health and safety manager. The mentor site helps the candidate improve its safety and health management system and assists managers and employees in preparing for participation in the VPP.

For more information on becoming a VPP member, contact our VPP team leader, Jerry Young, at (801) 530-6164, or visit OSHA's website: www.osha.gov or UOSH's website: www.uosh.utah.gov.

Workers' Compensation Review

By Joyce A. Sewell- Director, Industrial Accidents

A few changes have occurred in the workers' compensation system effective in July, 2003.

The maximum that an injured worker can receive for a work-related injury is 100% of the state's average weekly wage for the previous year. This amount has increased 3% for next year to \$579 per week.

The Industrial Accidents Division adopted a new rule effective June 24, 2003, which allows access to medical records of employees who file a claim for workers' compensation without a signed release from the injured worker. The workers' compensation programs were exempted out of the federal Health Insurance Portability and Accountability Act (HIPAA) if the state enacted a rule to remove medical records of injured workers from the federal rule.

The state of Utah has now enacted such a rule. This rule was deemed necessary to enable workers' compensation insurance companies to make a determination if a claimed injury was work-related or not. Since the workers' compensation program is an administrative system, the insurance companies are given a limited time frame in which to make a determination of whether a claimed injury is work-related or not, enabling an injured worker to receive benefits as quickly as possible. To facilitate making a determination of whether an injury is compensable or not, insurance companies are dependent upon medical information. Requiring a signed release for medical records by an injured worker could delay the determination process to a great extent. The medical records are not available to an employer unless the employer is a self-insured employer authorized to pay claims directly by the Labor Commission. The insurance company also may not release the medical records to anyone who is not a

party to the injured worker's claim for benefits.

The Labor Commission adopted the 2003 federal fee schedule for medical providers beginning on July 2, 2003. The fee schedule has assigned unit values for medical procedures which is then multiplied by the conversion factor dollar amount assigned by the Labor Commission for various specialties. The Commission allowed an increase to physicians for office visits and for restorative services such as physical therapy from \$40 to \$42 for each unit value.

The fee schedule, along with conversion factors, is designed to compensate physicians fairly for their time and expertise while keeping workers' compensation premium rates reasonable for employers.

**NEWS
NEWS
NEWS
NEWS**

For a complimentary copy of "The Employer's Guide to Workers' Compensation" and/or "The Employee's Guide to Workers' Compensation" please contact the Industrial Accidents Division at (801) 530-6844.

The “Rules” Corner

The Labor Commission has authority to adopt rules to assist in the administration of the various programs within the Commission’s jurisdiction. Pursuant to that authority, the Commission has engaged in the following rule-making activity.



I. RULES UNDER CONSIDERATION

RULE NUMBER	DESCRIPTION	EFFECTIVE
Rule 602-2-1 Adjudication	Procedure: Update and revision of procedural rules for adjudication of workers’ compensation claims.	Recommendations of ad hoc committee under discussion.
R602-2-4 Adjudication	Attorneys fees: In workers compensation cases, allows attorneys to charge an hourly fee not to exceed \$125 for up to four hours of consultation and review. Also allows an attorney to recover costs, to be deducted from the applicant’s award.	Will be submitted for publication in Utah Bulletin
R612-2-22 Industrial Accidents	Medical records: Clarifies that medical records necessary for workers’ compensation purposes are not subject to federal rules established under the Health Insurance Portability and Accountability Act (commonly referred to as “HIPAA”). Also sets forth the requirement that medical providers provide medical records to participants in the workers’ compensation system.	Effective as an Emergency Rule on June 23, 2003. Now subject to promulgation as a regular rule. Published in Utah Bulletin on July 15, 2003.

II. RULES RECENTLY ADOPTED

RULE NUMBER	DESCRIPTION	EFFECTIVE
R612-2-5 Industrial Accidents	Medical fees: Increases fees paid to medical providers for some medical and restorative services provided to injured workers. The rule also updates references to the RBRVS and Medical Fee Guidelines to the 2003 editions.	Published in Utah Bulletin on June 1, 2003; became final on July 2, 2003.
R612-2-22 Industrial Accidents	Medical records: Clarifies that medical records necessary for workers’ compensation purposes are not subject to federal rules established under the Health Insurance Portability and Accountability Act (commonly referred to as “HIPAA”). Also sets forth the requirement that medical providers provide medical records to participants in the workers’ compensation system.	Effective as an Emergency Rule on June 23, 2003. Now subject to promulgation as a regular rule. Published in Utah Bulletin on July 15, 2003.

Rule 614-1-4 UOSH	Postponement of reporting requirements: Because federal OSHA has postponed the effective date of certain reporting requirements for musculoskeletal disorder and hearing loss. To maintain consistency, the Utah Occupational Safety and Health Division (UOSH) proposes the same changes to Utah's standards.	Published in Utah Bulletin on May 1, 2003; became final June 3, 2003.
Rule 616-2-3 Safety	Update of Boiler Inspection Code: The Safety Division proposes to adopt the 2002 addenda to the 2001 National Boiler Inspection Code. The 2001 Code has previously been adopted by the Commission. The 2002 addenda makes only technical changes to the 2001 Code.	Published in Utah Bulletin on May 1, 2003; became final on June 3, 2003.
Rule 616-3-3 Safety	Update of International Building Code (Elevators): The Safety Division proposes to adopt recent amendments to 1109.7 of the International Building Code, which allows use of lifts as part of an "accessible route" in new construction.	Published in Utah Bulletin on April 1; may become effective May 2, 2003

Director Appointed to Lead Utah Anti-discrimination and Labor Division

Sherrie M. Hayashi has recently been appointed as the Director of the Utah Antidiscrimination and Labor Division (UALD). She has filled the position vacated by Joseph Gallegos, Jr.

Ms. Hayashi graduated from the University of Utah College of Law and is an attorney licensed to practice in the States of Utah and California. Most recently she was Associate General Counsel for the Labor Commission and has also served as the Fair Housing Coordinator for the State of Utah for more than four years. She also held the positions of antidiscrimination investigator for UALD and Assistant Attorney General for the State of Utah where she was counsel for the Department of Human Resource Management.

"The Labor Commission feels fortunate to have someone of Sherrie's capabilities accept this demanding position", stated Commissioner Ellertson. "She brings to the table a great deal of diverse experience in the labor and antidiscrimination fields, as well as tremendous talent and dedication".

Ms. Hayashi will be responsible for the oversight of 19 division employees whose mission it is to resolve complaints of employment and housing discrimination, and enforce laws which require the payment of earned wages, establish a minimum wage, license private employment agencies, and protect youth in employment.



REQUIRED POSTERS

The **UTAH LABOR COMMISSION** requires employers to display specific posters in the workplace. Our website below includes a list of those required posters with instructions to download or order them. Posters may also be copied.
www.laborcommission.utah.gov

For **FEDERAL** information and requirements:
www.dol.gov/dol/esa. You may also visit
www.dol.gov/elaws/.

Available from the **U.S. DEPARTMENT OF LABOR** - Salt Lake City District (801) 524-5706
(#5) Federal Wage and Hour Poster
Federal Family Medical Leave Act
Federal Employee Polygraph Protection Act

The “Federal Equal Employment Opportunity Is the Law” poster can be obtained from the **EEOC PUBLICATIONS DISTRIBUTION CENTER**
1-800-669-3362. Internet address: www.eeoc.gov

Available from the **STATE OF UTAH:**
“Unemployment Insurance Notice to Workers” can be obtained from the Dept. of Workforce Services, Unemployment Insurance Division (801) 526-9235.

“Worker’s Compensation”. This poster and others related are available from the **UTAH LABOR COMMISSION, INDUSTRIAL ACCIDENTS DIVISION** at www.laborcommission.utah.gov or (801) 530-6844.

These posters are available at no cost to the employer.